

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DONALD L. WICKERSHEIM,

Plaintiff,

Case No. 19-cv-1746-pp

v.

ANDREW M. SAUL,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING THE FILING FEE (DKT. NO. 2)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. He also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that he does not have the ability to pay the filing fee. The plaintiff's affidavit indicates that he is not employed, he is not married, and he has no dependents he is responsible for supporting. Dkt. No. 2 at 1. The only income the plaintiff lists is \$582.27 "after taxes" from the Illinois Municipal Retirement Fund, *id.* at 2, and he lists "\$378 +/- " in expenses each month (\$100 credit card payments, \$150

other household expenses, \$48 vehicle insurance, \$80 +/- gas), id. at 2-3. The plaintiff states that he is using his son's car, that he does not own a home, that his son does not charge him rent, that he owns no property of value, and that he has “[a]bout \$300 at moment” in a checking or savings account “when [he] can put couple dollars in savings.” Id. at 2-4. In addition, the plaintiff states “I live with my son who pays for all my expenses at this time because I have no income.” Id. at 4. The plaintiff has demonstrated that he cannot pay the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner’s final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff’s complaint states that he was denied Social Security benefits by the Commissioner, that he was disabled during the time period included in this case, and that the Commissioner’s unfavorable conclusions and findings of fact when denying benefits to the plaintiff are not supported by substantial evidence and/or are contrary to law and regulation. Dkt. No. 1 at 2. At this early stage in the case, and based on the information in the plaintiff’s

complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

Dated in Milwaukee, Wisconsin this 5th day of December, 2019.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge